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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

21 ANIBAL RODRIGUEZ, SAL CATALDO,
 22 JULIAN SANTIAGO, and SUSAN LYNN
 23 HARVEY, individually and on behalf of all other
 similarly situated,

24 Plaintiffs,

25 v.

26 GOOGLE LLC,

27 Defendant.

Case No.: 3:20-cv-4688-RS

**PLAINTIFFS' OPPOSITION TO
GOOGLE'S MOTION IN LIMINE
NUMBER 9 TO EXCLUDE EVIDENCE
AND TESTIMONY RE: EMOTIONAL
DISTRESS**

Judge: Hon. Richard Seeborg

Date: July 30, 2025

Time: 9:30 a.m.

I. INTRODUCTION

With this Motion, Google does not identify specific testimony from any deposition that it seeks to exclude at trial, or any portion of any expert report or document. Google instead seeks to broadly exclude unspecified “testimony and argument relating to Plaintiffs’ alleged emotional distress damages.” Mot. at 2. This does not make sense. As Google knows, Plaintiffs are not presenting a damages model based on emotional distress. Plaintiffs’ damages models are based on the money Google made (unjust enrichment based on Google’s profits) and the money Google never paid (compensatory damages based on Screenwise). Nominal damages also do not require the type of modeling disputed by Google.

In this respect, Google’s Motion is misplaced. Of course, to the extent Google’s goal with this Motion is to more broadly prevent the class representatives from testifying about the harm caused by Google’s conduct, or to otherwise prevent Plaintiffs from eliciting testimony and presenting argument regarding the harm caused by Google’s conduct, or offensiveness, that is also improper. Plaintiffs will present testimony and other evidence regarding how Google’s conduct harmed Plaintiffs and class members in various ways, including by intruding on their privacy, taking their data without permission or consent, and using that data for Google’s benefit without any compensation to Plaintiffs and class members. Plaintiffs do not see any of that testimony or evidence as “emotional distress damages” or evidence that would in any way stray beyond the prior orders of this Court and what is allowable in a class action.

Regardless, all of this is something that can readily be addressed at trial. Google's Motion should be denied as unnecessary in terms of any damages model based on emotional distress (there is none) and otherwise improper.

II. ARGUMENT

First, Google’s Motion should be denied because it does not address anything that is actually in dispute or at issue for trial. Plaintiffs are rightfully suspicious because Google cites no specific evidence that it seeks to exclude. Instead, it seeks to broadly exclude “testimony and argument relating to Plaintiffs’ alleged emotional distress damages.” Mot. at 2. Plaintiffs are not presenting a

1 damages model based on emotional distress, so this makes no sense. Plaintiffs will of course seek
 2 nominal damages for all of their claims, where this Court confirmed in its certification decision that
 3 nominal damages may be awarded on a classwide basis. Dkt. 445 at 13. But that is not a basis to limit
 4 any evidence or argument at trial.

5 **Second**, to the extent Google seeks to constrain the evidence and argument regarding the harm
 6 caused by Google's conduct, that is also a basis to deny this Motion. Harm is of course relevant. For
 7 example, the "highly offensive" inquiry for the invasion of privacy claims considers "the likelihood
 8 of serious harm to the victim" and "the degree and setting of the intrusion." *In re Facebook, Inc.*
 9 *Internet Tracking Litig.*, 956 F.3d 589, 606 (9th Cir. 2020). The jury should be able to consider
 10 testimony regarding the harm caused by Google when weighing the offensiveness of Google's
 11 conduct. Google can address that testimony through cross examination.

12 **Third**, Google's Rule 403 arguments also do not provide any support for its Motion. Plaintiffs
 13 will not be introducing a new damages model, so there is no prejudice in that respect. Google will not
 14 need to shift any defense strategy, and the jurors will not be misled or confused regarding the
 15 calculation of damages. Nominal damages do not require any such calculations. Testimony regarding
 16 the harm caused by Google's conduct is highly relevant and cannot possibly be excluded under Rule
 17 403.

18 **Fourth**, there are no class certification problems. Plaintiffs will appear and testify in their
 19 capacity as class representatives, as appointed by the Court to serve in that role. The focus at trial will
 20 be on common proof addressing common questions, including common proof regarding how Google
 21 presented (s)WAA as a privacy control that would stop Google from saving app activity, but Google
 22 then proceeded to collect, save, and use that (s)WAA-off app activity for its own enrichment without
 23 ever paying users. Plaintiffs intend to proceed in a manner that is fully consistent with Rule 23's
 24 requirements and the prior submissions at the class certification and summary judgment stages, none
 25 of which improperly raised any individualized issues. In *Vasquez v. Leprino Foods Company*, the
 26 court considered and rejected a similar argument. 2023 WL 2167245, at *3 (E.D. Cal. Feb. 22, 2023).
 27 There, the defendants argued that the witness testimony would be overly individualized such that

1 “jurors will not be able to extrapolate these class member witnesses’ claims to the entire class.” *Id.*
 2 The court found that unpersuasive, writing that the “argument ultimately goes to the weight of the
 3 witnesses’ testimonies, not their admissibility.” *Id.* The potential “numerous mini-trials” Google
 4 references are just the routine practice of attacking testimony through cross examination and contrary
 5 evidence at trial. Google is free to do so.

6 **III. CONCLUSION**

7 Plaintiffs respectfully ask that the Court deny Google’s Motion *in Limine* No. 9.

8 Dated: July 10, 2025

9 Respectfully submitted,

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